

**BEFORE THE
COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND**

March 9, 1999

IN THE MATTER OF

**GORDON CAYLOR
1772 East West Highway
Silver Spring, Maryland 20910
Complainant**

v.

**CHEVY CHASE CREST
CONDOMINIUM
c/o PAUL ASSOCIATES
6935 Wisconsin Avenue
Suite 400
Chevy Chase, Maryland 20815
Respondent**

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Case No.: 388-0

DECISION AND ORDER

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5(I), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1984, as amended, and the Commission having considered the testimony and other evidence of record, it is therefore this 9th day of March, 1999 found, determined and ordered as follows:

BACKGROUND

On January 20, 1998, Gordon Caylor (herein the "Complainant") filed a formal dispute with the Office of Common Ownership Communities in which the Complainant alleged that the Chevy Chase Crest Condominium (herein the "Respondent") had improperly directed him to remove a replacement closet window which he had installed in the front of his condominium and replace it with one which matched existing front closet windows in the community. The complaint was filed more than one year after the window was installed in the Complainant's home, during which time the Complainant

and the Respondent Condominium were unable to reach a resolution of this dispute. Following unsuccessful attempts by the Commission to mediate the dispute the matter was heard by a panel of the Commission on July 22, 1998.

FINDINGS OF FACTS

The Complainant owns a condominium located at 1772 East West Highway, Silver Spring, Maryland, which is within the Respondent Condominium Association. The Respondent is a 78 unit garden style condominium association located in Silver Spring, Maryland and is governed by a master deed and by-laws which were recorded in the Land Records for Montgomery County, Maryland on or about July 5, 1973.

The By-Laws for Chevy Chase Crest Condominium state, in pertinent part, that no co-owner shall "make any structural addition, alteration, or improvement in or to his unit, without the prior written consent thereto of the Board", and that "all repairs and replacements shall be substantially similar to the construction and installation at the time when the Master Deed and these By-Laws were filed among the Land Records of Montgomery County, Maryland." By-Laws, Article V, Section 11 (emphasis added). The By-Laws for Chevy Chase Condominium further state that the Condominium has the right to enter the units and cure any violation which exists under the By-Laws or the Master Deed of the Respondent Condominium. In particular, Article V, Section 9 states, in pertinent part, that the Board has the right to "enter the Unit in which or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the Co-owner at fault, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass."

The Complainant testified that on August 20, 1996, while serving as a member of the Board of Directors of the Respondent Condominium, he hosted a regularly scheduled Board meeting at his home. Some time either before or after said meeting a discussion was held between the Complainant and various members of the Board regarding his plans to replace all of the windows in his condominium with double hung windows which were to be substantially similar to the windows originally installed when the condominium was constructed. The Minutes of the Board meeting do not reflect any discussion of this request or that a decision was reached either approving or rejecting Complainant's application. In fact, it appears that the discussion between the Complainant and various Board members was off the record either prior to or immediately following the Board meeting, as confirmed by various witnesses who testified at the hearing on this matter.

Some time in early September of 1996 the Complainant installed seven double hung replacement windows on the exterior of his condominium which, with the exception

of the front closet window at issue in this case, are substantially similar to the windows they replaced and to other windows throughout the condominium. The Complainant did not seek the Condominium's written approval before installing his windows.

At the meeting of the Board of Directors of the Respondent Condominium in September of 1996, the Board advised the Complainant that his front closet window was not substantially the same as the original window. Another resident appeared at this meeting to request permission to change his front closet window, and was advised that a decision on his application would be delayed pending the outcome of the Complainant's application.

On October 16, 1996 the Complainant submitted a written request for approval of the work which had been completed at his home. In particular, the Complainant sought approval of the replacement of "all seven windows with double-paned thermal windows." In his application the Complainant alleged that the Board had previously granted verbal approval of his request, and that because his front closet window matched certain rear bathroom windows which had previously been approved, it should also be approved.

At the hearing in this matter pictures were presented which show that Complainant's front closet window is directly above the front door to his residence and adjoins a bathroom window which belongs to his neighbor's home. The two windows appear as one window unit, but are separated by a common wall and belong to two different homes. The double hung window installed by the Complainant contains two window panes with wide aluminum trim and a narrow glass surface. The adjoining bathroom window contains a three paned casement style window made of wood with narrower wood trim. The rear bathroom windows referred to by the Complainant are single casement style windows approximately six feet from the nearest window and are located in the backs of the units.

When questioned about these differences, the Complainant stated that a wooden, double paned casement window is not commercially available and that there is no substantial difference between the window he installed and one the Board would accept. Various members of the Board disputed this claim, stating that there is a substantial difference between Mr. Caylor's front closet window and the adjoining bathroom window, and that it is unfair to compare the front bathroom windows to the rear bathroom windows which are six feet from one another and do not affect the appearance of the front of the units.

Various estimates of the cost of replacing the front closet window were offered at the hearing, ranging from between \$500.00 to \$800.00 for a window already purchased by the Condominium to replace the Complainant's, to between \$1,500.00 and \$2,000.00

for a quote provided by the Complainant. When questioned about this quote Mr. Caylor stated that his contractor indicated it would cost between \$1,500.00 and \$2,000.00 to custom make a window to match the front closet window, but did not have a written quote reflecting this estimate.

In February of 1997 the board authorized the expenditure of up to \$2,000.00 to have a custom window manufactured, delivered and installed in Mr. Caylor's residence. At the time of the hearing the Board did not have the exact cost of the window which had been manufactured, and agreed to submit this following the hearing. The bills which were subsequently submitted indicate that the window cost \$442.00 to construct and will cost \$85.00 to install.

CONCLUSIONS OF LAW

Based upon a preponderance of the evidence, including testimony and documents admitted into evidence, and after a full and fair consideration of the evidence of record, including all legal arguments made by the parties, the Commission concludes that:

1. In accordance with Article V, Section 11 of the By-Laws of the Chevy Chase Crest Condominium, written approval of the Board of Directors is required for any structural addition or alteration to a condominium in the community. Therefore, the Complainant was not entitled to rely upon any verbal approval which he allegedly received from the Board of Directors before replacing the windows in his condominium. Moreover, even if the Complainant received verbal approval to replace his windows with ones which were substantially similar to the existing windows, as he alleges, the issue in this case is whether his replacement closet window is substantially similar to that which it replaced.
2. Pursuant to Article V, Section 11 of the By-Laws of the Chevy Chase Crest Condominium, all replacements to the exterior of the condominium shall be "substantially similar to the construction and installation" when the Master Deed and By-Laws to the Condominium were recorded. The Commission finds that the replacement closet window which was installed by the Complainant was not substantially similar to the original construction and installation and therefore violates the provisions of Article V, Section 11 of the By-Laws. In reaching this conclusion the Commission reviewed pictures of Complainant's replacement closet window which show that the window adjoins the bathroom window serving the unit next to the Complainant's and is located directly above the front entrance to these two units. The adjoining bathroom window is original and contains a three

paned wooden casement window with standard wood trim. Complainant's replacement window is a double hung or two pane window made of aluminum with wide aluminum trim and a narrow glass surface. It is readily apparent to the naked eye that the two windows are different, which difference becomes more obvious given the location of the window directly above the entrance to the building. Under these circumstances, the Commission finds that the Board's denial of Complainant's application to approve his replacement closet window is reasonable and consistent with the general plan of development for the community. See Kirkley v. Seipelt, 212, Md. 127, 128 A.2d 430 (1957). The Commission further finds that the Respondent Condominium has the right to enter the Complainant's unit and cure the violation pursuant to Article V, Section 9 of the By-Laws.

3. The Complainant's claim that it would cause him economic hardship to replace his closet window with one already manufactured for the Respondent Condominium Association is not supported by the evidence and is therefore rejected by the Commission. The Complainant testified that he paid approximately \$2,700.00 to replace seven windows or approximately \$385.00 per window. While he claims that the window surface of the closet window is much smaller than the other windows and it therefore cost less than one-half the average cost of each window, he did not provide an estimate or written proof showing that the cost of replacing the closet window was less than the cost of replacing any other window. Furthermore, the actual cost of fabricating a replacement window by a millwork was less than the estimate which had been provided to both the Complainant and Respondent and is not substantially more than the cost incurred by Complainant in replacing each of his other six windows. Accordingly, the Commission concludes that the Board acted reasonably in directing the Complainant to install the closet window which has been custom made for the Respondent.

ORDER

In view of the foregoing and based on the evidence of record, and for the reasons set forth above, the Commission orders:

1. The Complainant, within thirty days of the date of this Order, shall pay to the Respondent Condominium the sum of \$442.00 for the cost of constructing the replacement closet window. The Condominium shall provide the window to the Complainant within ten days of payment, and

the Complainant shall install the window, at his own expense, within thirty days of receipt of the window from the Condominium. In the alternative, within thirty (30) days of the date of this Order the Complainant shall permit the Condominium access to his unit to install the replacement closet window, at a reasonable hour to be agreed upon in advance, and shall pay the Condominium the additional sum of \$85.00 for the costs of installing said window.

The foregoing was concurred in by panel members Gardner, Kristian, and Murphy.

Any party aggrieved by the action of this Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to Chapter 1100, Subtitle B, Maryland Rules of Procedure governing administrative appeals.

Respectfully submitted,

By: 

David C. Gardner, Panel Chairperson
Commission on Common
Ownership Communities